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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,818	12/21/2005	Jacques Granger	0580-1037	2840
465 7590 03/18/2010 YOUNG & THOMPSON 209 Madison Street Suite 500 Alexandria, VA 22314				
EXAMINER SMALLEY, JAMES N				
ART UNIT		PAPER NUMBER		
3781				
NOTIFICATION DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary

Application No.

10/561,818

Applicant(s)

GRANGER ET AL.

Examiner

JAMES N. SMALLEY

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-21, 23-25 and 27-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-21, 23-25 and 27-33 is/are rejected.
- 7) ☒ Claim(s) 33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 November 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings were received on November 4, 2009. These drawings are accepted.

Claim Objections

2. Claim 33 is objected to because of the following informalities: In the second-to-last-paragraph of the claim, "...and upper overlap area..." should be "...an upper overlap area..." Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 17- are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear what the lower annular overlap area comprises. Examiner notes the figures only appear to show one overlap, between the flap and the seal.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 17, 19, 23, 27-30, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loffler et al. US 5,743,420 in view of Emery US 3,664,536.

Loffler '420 teaches, in the embodiment of figures 6-8 a closure cap taught to be formed of plastic, including an outer thread (27) on a container neck, an inner head (3), an inner skirt (5), inner

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thread (not shown, but inherently present, as the reference teaches in column 7, line 53, that the cap is to be screwed onto the container), a seal comprising a central part (53) and a peripheral part (55, 59), a means of radially compressing the seal in contact with the neck comprising a circular tab (9), which forms an overlap inclined at greater than 45 degrees to the horizontal (**Examiner notes figure 8, wherein the overlap, when measured from the horizontal located radially outwardly of the orientation shown in the figures, results in an overlap just beyond 90 degrees**). The area immediately underneath the tab (9) is read to be the annular groove. Examiner again notes that while the figures fail to show threading, the reference is clear that the cap is to be threaded on a bottle, and thus there are inherently threads on the closure cap inner surface, which would form the lower bound of the groove.

The reference, as applied, teaches all limitations substantially as claimed, but fails to teach an outer shell.

Emery '536 teaches an outer shell comprising an outer head (34) and an outer skirt (36), and tamper evident means (38), to be applied over a threaded cap on a bottle neck. Examiner notes Loffler '420 is silent as to any tamper-evidencing. Thus, it would be desirable to provide means to indicate tampering with the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the outer shell of Emery '536 to the closure cap of Loffler '420, motivated by the benefit of providing tamper evidencing.

Furthermore, Loffler '420, as modified, teaches all limitations substantially as claimed, but fails to teach the circular tab having an axial spacing from the inner head forming the bottom of the insert from 0.5 to 5 mm, or the circular tab having a radial width varying from 0.2 to 2.0 mm.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap of Loffler '420, forming the forming the bottom of the insert from 0.5 to 5 mm, and forming the circular tab having a radial width varying from 0.2 to 2.0 mm, or to any other suitable size ranges, motivated by the benefit of configuring the cap to seal a like-sized container. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Furthermore, it has been held that where the general conditions of a claim are disclosed in

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the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claim 19, Loffler '420, as modified, teaches all limitations substantially as claimed, but fails to teach the thickness of the inner skirt being between 0.1 to 1 mm, or more specifically from 0.15 mm to 0.5 mm. It would have been obvious to one having ordinary skill in the art to form the thickness of the skirt to any suitable size, motivated by the benefit of fitting a given-sized container. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Furthermore, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claim 23, because the shell of Emery '536 is taught to completely surround the inner closure cap, such is read to have a larger height H_c than the insert H_i .

Regarding claim 27, Emery '536 teaches tamper evident means in column 3, lines 36-45 comprising a weakening at juncture (39) to indicate tampering.

Regarding claims 28-29, Loffler '420, as modified, teaches all limitations substantially as claimed, but fails to teach the radius of curvature of the shell is between 0.5 and 5.0 mm, more specifically 1.5 mm to 2.5 mm, and the insert having a radius equal to R_C . It would have been obvious to one having ordinary skill in the art to form the shell and the insert to any suitable size, motivated by the benefit of fitting a given-sized container. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Furthermore, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claim 30, the overcap is read to be force-fit over the inner cap, as it is "fit" over the cap, and such requires forcing, including the force to put it in place, and the force to crimp onto the container neck.

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7. Claims 18 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loffler et al. US 5,743,420 in view of Emery US 3,664,536 as applied above to claim 17, and further in view of Stull US 4,651,886.

Regarding claim 18, Loffler '420 teaches all limitations substantially as claimed, but fails to teach retaining ribs disposed

Stull '886 teaches nibs (24, 30, 32) to retain a sealing disc within a closure cap. Examiner notes the term "typically" is read to be indefinite, and thus Examiner interprets the claim limitation of the ribs being disposed 120 degrees apart from each other as an example, and not a requirement.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Loffler '420, providing the nibs taught by Stull '886, motivated by the benefit of securing the sealing disc within the closure, before application onto a bottle.

Regarding claim 32, Loffler '420, as modified, teaches all limitations substantially as claimed, but fails to teach the thickness of the inner skirt being between 0.1 to 1 mm, or more specifically from 0.15 mm to 0.5 mm. It would have been obvious to one having ordinary skill in the art to form the thickness of the skirt to any suitable size, motivated by the benefit of fitting a given-sized container. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Furthermore, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

8. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Loffler et al. US 5,743,420 in view of Emery US 3,664,536 as applied above to claim 17, and further in view of Morton US 5,259,522.

Loffler '420, as modified above, teaches all limitations substantially as claimed, but fails to teach the insert/inner cap being formed of thermoplastic comprising PS, PET, PA, PE, or PP.

Morton '522 teaches a closure cap with a deformable annular flange (32) for sealing a closure cap, teaching it is known to form such closure caps from polypropylene, in column 3, line 55.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Loffler '420, forming it of polypropylene, or any other suitable material for forming threaded closure caps which seal against the bottle rim onto which they are applied. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

9. Claims 21 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loffler et al. US 5,743,420 in view of Emery US 3,664,536 as applied above to claim 17, and further in view of Dautreppe et al. WO00/30948.

Examiner makes reference to US patent 7,210,592, which is the US patent for the same publication.

Loffler '420, as applied, teaches all limitations substantially as claimed, but fails to teach

Regarding claims 24, Dautreppe '592 teaches an overcapping cover which is to be crimped on bottles (as in the embodiment of figures 6a-6b), comprising an elongated skirt (4) and a tear strip defined by lines of weakness (43, 44). The problems solved section notes the covers play a decorative role in the appearance. The skirt is quite elongated, and appears it would be twice the length of the closure cap/inner cap of Loffler '420, were it to be applied to the container therein.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bottle of Loffler '420, providing the cover taught by Dautreppe '948, motivated by the benefit of providing a decorative cover for appearance.

Thus, regarding claim 21, in column 7, lines 52-58, the reference teaches forming the shell of aluminum foil.

Regarding claim 25, the lines of weakness will both occur between Hi and Hc, at the very least the upper line of weakness (43).

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10. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Loffler et al. US 5,743,420 in view of Emery US 3,664,536 as applied above to claim 17, and further in view of Christmas et al. US 5,971,179.

Loffler '420, as applied above, teaches all limitations substantially as claimed, but fails to teach a complementary element.

Christmas '179 teaches a non-refilling device for insertion into a bottle neck, to prevent refilling of the container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bottle of Loffler '420, providing the non-refilling element taught by Christmas '179, motivated by the benefit of preventing refilling of the container.

Response to Arguments

11. Applicant's arguments filed November 4, 2009 have been fully considered but they are not persuasive.

Applicant argues Loffler '420 fails to teach an overlap area inclined at greater than 45 degrees to the horizontal.

Examiner notes Loffler '420, figure 8, wherein the overlap, when measured from the horizontal located radially outwardly of the orientation shown in the figures, results in an overlap just beyond 90 degrees.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH

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shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES N. SMALLEY whose telephone number is (571)272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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